No. 14,706

In the

# United States Court of Appeals

*For the Ninth Circuit*

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PACIFIC FAR EAST LINE, INC., a Corporation,

*Appellant,*

vs.

JOHN WILLIAMS,

*Appellee.*

---

## Appellant's Reply Brief

Appeal from the United States District Court for the Northern District of California, Southern Division.

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Appellee seeks to show in his brief (1) that one of his feet was on the first rung or step of the ladder leading into the hold; (2) that it was that foot which slipped; (3) that there was frost or ice on that rung which caused him to slip; and (4) that if there had been sufficient light afforded he would have been able to see the frost or ice and avoid the accident. Appellee has failed to refer to testimony which meets his burden of proof in these respects.

Appellee has taken the position throughout his brief that many of the questions raised in appellant's opening brief were factual ones and, inasmuch as they were submitted to the jury, the jury's decision is final. Fortunately, that is not

the law. The Supreme Court of the United States has clearly laid down the rule that the jury's finding of fact is not final unless based upon *substantial* relevant evidence and substantial has been defined as "such relevant evidence as a *reasonable* mind might accept as adequate to support a conclusion." As indicated in Appellant's opening brief, page 17, that rule has been recognized by this court. It is and has been Appellant's contention that the things which plaintiff was obliged to prove in the case did not meet that burden and Appellee has failed to refer to testimony in its brief which meets this burden of proof.

## I.

**The only reasonable interpretation of the evidence furnished by Plaintiff-Appellee as to where Plaintiff was at the time he slipped is that it was on top of the hatch coaming and not on the first rung of the ladder.**

The contention is made in Appellee's brief that it should be *inferred* from the testimony taken as a whole that Plaintiff's foot had reached the first rung of the ladder after he stepped back. There is a considerable amount of testimony plainly disproving this which is quoted in our opening brief (pages 18-20) but for the convenience of the court we quote some of it again as follows:

"Q. Now, you say at the time you fell, you had one foot on this, what do you call it?

A. On that, yes, on the coaming.

Q. On the coaming?

A. Yes, sir.

Q. I see. And the other foot was where?

A. *Getting off,* where I was getting off, just like (indicating)—

Q. You stepped back with the other foot, is that right?

A. You have to step back."

* * * * * * *

"Q. I see, now correct me if I am wrong. *Your foot was somewhere along this hatch coaming* (indicating)?
A. Yes, sir."

The part italicized above clearly indicates one foot was on the top of the hatch coaming and Williams was "getting off" with the other.

At no place in his testimony did Williams say that his foot he was getting off with had reached any rung of the ladder. If it had been a fact he could have and would have said so, and his counsel would have made sure that he was asked that precise question so that the answer would get into the record. That this interpretation is proper is indicated by the testimony of Houston Hall where he said in reference to what he saw on the face of the hatch coaming:

"* * * Just like something hit there and slid off, *up above the steps.* * * *" (135)

(Throughout the case the means of descending into the hold was described as a ladder and the place where the longshoremen can put their feet and hold on to with their hands was described as steps on the ladder.)

Inasmuch as the evidence shows Appellee had one foot on the top of the coaming and fails to show that his other foot had reached any rung of the ladder, it could only have been the first foot which slipped. That is the only reasonable conclusion. At the trial plaintiff did not show, and in Appellee's brief it is not contended that there was any frost or ice on the top of the hatch coaming, or that the light there was insufficient. Obviously such a contention would be untenable. Therefore, if Williams slipped, as the evidence shows he did, with his foot on top of the hatch coaming he plainly has no case.

## II.

**Appellee's contention that there was frost or ice on the first rung of the ladder where it is claimed appellee slipped is not based upon any substantial evidence offered by plaintiff's expert or by any evidence as to the facts.**

It may be stated at the outset (assuming for the purpose merely of the argument that Williams did slip when one foot was on the top rung or step of the ladder) the distance from the top of the reefer hold to the rung is 2′ 9¼″ (240-243). Appellee argues that while two experts, one for the plaintiff and one for the defendant, testified as to whether there would be frost or ice where the plaintiff slipped if the key plug was lifted out, the jury was privileged to accept the testimony of plaintiff's expert, Mr. Hotchkiss.

Mr. Hotchkiss' testimony is of no value for at least two reasons. First he did not testify that in the short interval of time involved frost or ice would form almost three feet (actually 2′ 9¼″) above the top of the reefer hold (the distance from a point level with the bottom of the plug which had been removed and the first step or rung of the ladder below the top of the hatch coaming). He merely testified that in general frost or ice would be precipitated when the air in the reefer hold of a temperature of 10° Fahrenheit came in contact with the air above of a temperature of about 52° Fahrenheit. All the testimony he gave on that is as follows:

> "Mr. Chandler: Mr. Hotchkiss, let's take this area, this enclosure here, for instance. If this area is closed, as shown up here in Plaintiff's Exhibit No. 2, and the air in that area below is refrigerated to 10 degrees, and (185) then that area is opened by lifting out a section of it, as shown here in Plaintiff's Exhibit No. 1, resulting in an opening as shown in Plaintiff's Exhibit No. 3, and the air outside here, prior to the removal of this object here, was 52 degrees, would the meeting of those

two airs at different temperatures cause any foreign—any substance at all to be deposited in the area shown here?" (196)

"The Court: All right, now you can answer that question.

The Witness: It would cause, as the temperature dropped, an immediate temperature drop and precipitation of moisture here. You have a difference of 10 degrees below, there's 52 degrees here. I would say that there would be an immediate temperature drop to below 32, causing, as she dropped, precipitation of moisture from the atmosphere, then freezing of such moisture at that point." (197-198)

Second, he erroneously stated that frost or ice would form on the coaming of the hatch even though that coaming was much warmer (which it was) than the cold air which came in contact with it. This statement is absolutely contrary to a well known physical phenomenon which Mr. Hotchkiss had earlier admitted in his testimony was true, namely, that moisture is deposited by air (if it has some moisture in it) striking against an object colder than the air which reduces the temperature of the air to the dew point. In this respect Mr. Hotchkiss testified:

"Q. Actually the air that is 10 degrees is warmed rather than made colder?

A. Its temperature raises." (209)

This would increase the capacity of the air to retain moisture and there would be no precipitation.

Previously he had testified:

"Q. Mr. Hotchkiss, another important factor, is it not, is whether or not moisture is deposited on a surface, like you have described here, is the temperature of the thing on which it is deposited?

A. Of the surface, exactly.

Q. Yes, so what happens is, when it is up against a surface like the coaming there, that if the surface is warmer, or rather colder than the air which it contacts, the air which contacts the surface, then you have a deposit of moisture?

A. Precipitation.

Q. On that surface?

A. That's right." (206)

This physical phenomena which causes moisture to be deposited when the temperature of moisture laden air is reduced to the dew point is so elementary and universally known that this Court will take judicial notice of it. The Court has the right to and should, we submit, refuse to give any weight to testimony based on obvious error.

Appellee has fallen into error, in stating that cold air rushed up from the reefer hold and caused frost to be deposited on the hatch coaming when, it is stated in the brief, the blowers were on. The fact is the only credible evidence introduced on the point was that contained in the entry in the log which is that the blowers were turned off at one o'clock (117), which is the hour at which the longshoremen returned to this ship to start taking off the plugs. The mishap occurred at about 1:05 A.M. One of plaintiff's witnesses who was a longshoreman did say that there would be frost formed on the bulkhead because the blowers would force the air up (p. 11 Appellee's brief), but that was not responsive to any question and obviously was not based on any knowledge of the witness. It may be unnecessary to add, perhaps, that it is also elementary that cold air is heavier than hot air and will stay, in a situation like this, where it is unless forced out.

If, as Appellee contends, the jury accepted such testimony, the verdict should not be allowed to stand. Mr. Goedewaggen, based on tests and observations, gave direct testimony to the contrary. His testimony was that the freeze

point was never reached by approximately 12°, i.e., the temperature was about 44½° Fahrenheit even when the blowers were on. The temperatures reached with the blowers off was 2½° higher. Testimony in this respect is detailed in Appellant's opening brief (pages 24, 25) and (pages 327, 328, 329 of the record). And, it may be pointed out here that the Goedewaggen temperatures were taken at the top level of the plugs and not where the first rung of the ladder is located (240, 241, 242). It may be further added that the interval of time involved in the test made by Mr. Goedewaggen was several times longer than the time actually involved at the time of the mishap, i.e., the time which elapsed after the key plug was lifted out and swung to the inshore side of the vessel and unhooked by two men and partly swung back. (Williams' body was seen to fall by the winch driver before he got the sling back over the hatch.)

Furthermore, the reefer hold is air tight and the cold air in the hold is merely circulated around inside the hold. It is not drawn in from the outside and is not blown out.

Mr. Maple, the former chief engineer, testified as follows:

> "A. The air in the hold, sir, and the hatch is closed air tight and we just circulate the present air in the hold." (347)

His testimony on page 348 of the Transcript explains that the cold air is circulated from the hold to the diffuser room where it is chilled and forced back into the hold. The diffuser room is part of the reefer hold. Consequently, if any substantial amount of air was to be forced out through the small opening created by the removal of the plug, a partial vacuum would be created which would hold the air back. This is demonstrated by the small difference in temperatures when the blowers were on and when off at the plug level, only about 2½°.

## III.

**There is an abundance of testimony in the case that the three cargo lights provided by the ship for the use of the stevedore were entirely adequate to furnish light to the longshoremen when removing the plugs and there is no substantial testimony to the contrary.**

These lights had 300 watt bulbs and there can be no question, therefore, as to whether such a big light would adequately light the area in the square of the hatch if properly used.

Appellant's opening brief quoted from testimony given by Mr. Walsh, which was, in brief, that one of three lights was used to furnish light in the hatch while the plugs were being removed.

Mr. Walsh also testified:

"Q. Well, let me ask you this. Suppose he wants to light this area here and he is standing back off on the deck. Could you demonstrate how he could do that without directing the light to that point?

A. Well, if he would hold it any place at that rail, it would shine on the plugs.

Q. Shine on the plugs down here, right?

A. Yes." (278)

"Q. Mr. Walsh, I will ask you, when you cover up the hatch like you did at 12:00 o'clock on the night we are interested in, are the cargo lights removed from the vessel's hold?

A. Yes, they have to.

Q. I see. And then they are placed somewhere on deck?

A. Yes.

Q. And will you tell us whether they are thereafter ever used for the lighting of the hatch in the plugs when you are removing plugs?

A. Yes, they use them. Generally one fellow *holds them* or *hangs them up.*" (272)

Mr. Wishard, the mate, testified as to how the lights were handled when longshoremen picked them up to shine onto the plugs and one of the longshoremen picked one of them up to shine light down into the hold on the place where Williams had fallen. Wishard also testified that sometimes the longshoremen laid a cargo light on its rim so that it shone across the top of the coaming and lit the square of the hatch area (pages 159 and 164).

Appellee attacks the adequacy of the cargo lights for the use indicated by contending (1) that they *might* shine in the longshoremen's eyes and thus interfere with rather than aid their work (2) if hung on the rail, even on the extreme offshore side, they *might* be smashed by lifting the plug out and (3) that perhaps they were too hot to handle.

As to the last contention, the testimony is all to the contrary and was given by Mr. Wishard and Mr. Walsh.

As to the second, there is no question but that if the work is carelessly done, a plug being lifted out might strike the light. That is true of all work. But two witnesses, Mr. Walsh and Mr. Wishard in their long experience had never seen that happen. All they said was that it *could* happen.

In respect to the first, there are two convincing answers. One is that there is uncontradicted testimony that the cargo lights had been used generally to light the plug area while plugs were being removed and no testimony was introduced that any other method had ever been used when hatch tents are used over reefer hatches. Also there is uncontradicted testimony that these cargo lights were also used to furnish light in and near the square of the hatch for the use of the longshoremen in stowing cargo. One of these lights had been and was generally hung at the corner of the hatch (inshore side) and the two others had been lowered to the point where they were only about the depth of the 'tween deck hatch above the floor of the 'tween deck hatch.

Mr. Wines, the winch driver, testified in part as follows:

"Q. Well, then is it your testimony then, Mr. Wines, that when the plugs are all out, you have two lights hanging down into the hold and one hanging on the coaming, is that correct?

A. Correct.

Q. Or the rail, is that right?

A. Over the coaming, down. Not on the rail, on the coaming.

Q. Yes. When you say coaming, you mean that fence, we will call it, around the hatch?

A. Right over here, right in the corner there. And there's two lower down, lower in the holds where the men are working, at each corner of the hatch, (Indicating.)" (322)

Certainly, if there was any real hazard of the light shining in the longshoremen's eyes, as Appellee contends in his brief, the practice would not have been followed. It may be added that if there was any hazard of getting smashed, the light on the coaming would be subject to it hour after hour as the loading went on and the loaded sling lowered and the empty one raised hundreds of times during one loading operation. In any event, the danger that a light might carelessly be shone in a longshoreman's eyes exists with all portable lights; and, in fact, the peril involved in looking into bright lights would exist in all cases unless indirect lighting were in use.

Actually, there would be no occasion for the longshoremen who were working on the plugs to look up at the light. Their job was to hook on at their feet and to merely step out of the way on the remaining plugs until the last one was being removed. While that was being done they merely stepped out of the way over the coaming (Wines 318). Furthermore, if any cargo light used for lighting the plugs were

held by longshoremen, it could be directed as necessity required, which may or may not be said of the three lights used after the hatch was opened up and work of loading cargo commenced.

IV.

**The winch driver who was in a very favorable position to observe the lighting gave testimony which clearly is to the effect that if the lights as placed did not actually afford enough light they could easily have been placed so they would have.**

Winch driver Wines testified in part as follows:

"Q. Where was the light that furnished the light for that (referring to the plugs then)?

A. There was three lights altogether. When they cover up, they take all the lights and set them on deck and *have one shining on the coamings and or part of the hatch so you can put on the plugs.*" (314)

* * * * * * *

"Q. When you came back that night at 1 o'clock, who placed the lights for the hatch that night?

A. They were sitting there on deck, yes, since we come back from dinner * * *. *And one of them was placed so we could see to put on the plugs,* although I admit it was a little dim. It wasn't really shining down on the plugs, it was shining over the hatch. The hatch coaming is about 18 inches off the plugs.

Q. (By Mr. Cooper): That was your testimony, was it?

A. Yes, sir." (314, 315)

This testimony shows that the longshoremen had actually used one light to light the job while they were taking off the plugs and two more were available for their use.

One of the three lights available was directed across the top of the hatch coaming. Such light was probably in the position shown on the photograph of defendant's Exhibit 6 D, attached to Appellant's opening brief. If another light

had been used by the longshoremen on the other side of the hatch, that is set up on the winch driver's platform or put on its edge as one of the witnesses testified, there would seem to be no room for doubt whatever that the square of the hatch where the work was going on would have been adequately lighted, if it was not before. And there is no evidence produced by plaintiff, on whom the burden lay, to show that it would not have. It may be noted that on this occasion the light was only a *little dim.*

Wines, who was standing at his station as winch driver near the edge of the hatch testified further:

"Q. And from there you could look down on the plugs when the plugs were in place, couldn't you?

A. Yes.

Q. And when the one plug was removed, you could look right straight down into the hold, couldn't you?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now when you were looking down from your station, will you tell us whether or not you could see the rim or ledge, it's sometimes called, *which is level with the top of the plug?* This is sometimes called a ledge, isn't it?

A. Yes, sir.

Q. Did you see that from your position that night?

A. Yes.

Q. And could you also see the ledge, which is some 8 or 10 inches farther down from your position?

A. Yes." (318-319)

V.

**There is no basis for the inference which Appellee would have the Court draw that the ceiling lights in the hold were intended by the shipowners to provide illumination in the hatch area where it is claimed Williams slipped.**

Appellee cites no testimony to prove it. In fact the testimony is uniformly to the contrary; i.e., that the ceiling lights in the hold were for the purpose only of furnishing light to the longshoremen stowing cargo in the wings and fore and aft of the square of the hatch. Cargo lights lowered into the hold, when the work was going on of stowing cargo, furnished light in and near the square of the hatch.

It would be not a little absurd to infer that where a shipowner finds it necessary to lower powerful cargo lights to furnish light in the hold itself, where the ceiling lights are, that these small ceiling lights would furnish light to illuminate the spot where it is claimed Williams slipped several feet above the hold. And it should be pointed out here that these ceiling lights in the hold were distant horizontally an average of more than 20 feet from the opening left by removal of the key plug. (From where the lights are affixed to the top of the tween deck hold to the edge of the hatch and was from 10 to 15 feet. Another 8 feet from the side of the square of the hatch to the place where the plug had been removed make a total of 18-23 feet and more.) Also, as pointed out in Appellant's opening brief, the light coming from these small lights was directed toward the floor of the hold where the longshoremen would work in stowing cargo. It would only be a minimal amount of light which would come up through this small opening, and would be observable only in the opening itself. Furthermore, as pointed out in our brief, light coming up from below through such a small opening would not illuminate the rung at the end of the hold below the top of the coaming because that rung is

recessed in the coaming. In any event, Mr. Goedewaggen is conclusive as to the effect of these lights (331).

## VI.

**No decisions of this circuit indicate that the principle upon which the Cookingham case and numerous other cases in other circuit stands has been disapproved and it should be applied in this case.**

The fundamental theory of the *Cookingham* and other cases which have applied the rule is that transitory conditions do not constitute unseaworthiness. These cases point out that historically unseaworthiness was never intended to apply to transitory unsafe conditions especially where the evidence did not show who or what caused the temporarily unsafe condition or how long it had existed. Neither *Pettersen v. Alaska Steamship Co.,* 205 F.2d 428, nor *Lahde v. Soc. Armadora,* 220 F.2d 357, both decided in this circuit, affords any reason for Appellee's assertion that the judges of this circuit have not recognized this rule. In the *Pettersen* case the stevedore furnished equipment which the ship ordinarily furnished and had the duty to furnish without defect. An inherent defect in such equipment, even though latent furnishes a basis for liability as in the case of *Sea's Shipping Co. v. Sieracki* (1946), 328 U.S. 85. In *Lahde,* libelant had already specifically alleged "unseaworthiness"; the only question was whether his pleadings were required to allege lack of knowledge. However, in *Freitas v. Pacific-Atlantic Steamship Company,* 218 F.2d 562 (9th Cir. 1955), this court cited the *Cookingham* case with apparent approval.

If the *Cookingham* rule should be applied to a case where it does not appear who caused the unseaworthiness, *a fortiori* it should be applied where it is shown without question that the transitory unsafe condition (if any existed) was caused by somebody who was not in the employ of or con-

trolled by defendant Pacific Far East Line. The work of handling cargo was being done by an independent contractor and the men, including Williams, who actually determined how the equipment, including lights, was to be rigged and arranged were in the employ of that independent contractor.

Of all situations, this is the one where the *Cookingham* rule should be applied for the reason already stated and for the further reasons (1) it was created by manner or method of performing work and (2) was transitory to the point of being almost momentary. If plaintiff's story be accepted at all, of necessity it must be based factually on the claim that after the plug was lifted out cold air rushed up, deposited frost or ice on the first rung of the ladder and at that instant Williams needed light to enable him to see the frost.

That "seaworthiness" is not synonymous with "safety" has been recognized in cases in many of the circuits, including particularly the *Hanrahan* case, decided in the Second Circuit, as long ago as the year 1919. *Hanrahan v. Pacific Transport Co.*, 262 Fed. 951 (2d Cir. 1919).

## JURY INSTRUCTIONS

Appellee's comments on requested Instructions 4A, 4B, 7A and 7B require no extended comment because the questions involved have been covered in Appellant's opening brief and to considerable extent in Appellant's argument above on the law of "transitory conditions."

Appellee has misconstrued Instruction 11A. It does not state that the cargo lights without proper arrangement constituted adequate lighting; but, on the contrary, it states that any failure of the longshoremen to place the lights properly does not constitute unseaworthiness or negligence of the ship's operator. The instruction is based on the law

established in the case of *O'Leary* and other cases cited on page 31 of Appellant's opening brief and particularly on the language of the court in *Riley, Admx. v. Agwilines, Inc.,* 240 N.Y. 402, 73 N.E. 2d 718 (1947), 1947 AMC 1038.

The instruction given by the Court did not sufficiently direct the jury's attention to the issue of lights which was one of the important issues of the case and also it purports to relieve the ship operator of liability only where the stevedore "negligence or improperly" used the equipment furnished. It does not matter what happens after proper equipment is furnished at least where there is not any opportunity, knowledge, or authority on the part of the ship operator to correct the condition.

Instructions 21A and 21B did not, as Appellee seems to think, direct the jury to find that Williams was contributorily negligent but merely established standards which the jury could apply to the facts they found in order to make a determination in respect to the evidence of contributory negligence. In addition to the cases supporting these instructions found at page 40 of Appellant's opening brief see also the case of *Crawford v. Pope & Talbot,* 256 F.2d 784 (3rd Cir. 1953), 1953 A.M.C. 1799. The instruction had to do with contributory negligence and not assumption of risk.

When the issue involved is so important to the case as it is here, it is respectfully submitted that a rule of law applicable to the precise situation should be clearly set forth in the instructions and not merely covered by a general statement of the principles involved.

Appellant's requested Instruction 26A is not, as Appellee seems to think, an application of the doctrine of the assumption of risk. It merely applies to such hazards as are inherent in the job, particularly work connected with freezer hatches. Furthermore, it is applicable only if Appellee's fall resulted solely from an inherent hazard.

Appellee was in error in his brief in respect to certain statements of fact. The errors are not of sufficient importance to put in the brief proper but are placed in Appendix A, because we feel they should not go unchallenged.

The relief requested in Libelant's Opening Brief should be granted.

Respectfully submitted,

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**(Appendix Follows)**

## APPENDIX A

**Erroneous Statements of Fact in Appellee's Brief.**

Several errors of fact in addition to those pointed out above were made in Appellee's brief which should not go uncorrected.

At page 2 it is stated, "There is no evidence as to where his (Williams') partner went". Mr. Wines, who was the winch driver and in an excellent position to see, testified as follows:

> "Q. Now, Mr. Wines, getting back for a moment to the situation where you had seen two men down on the plugs, after you saw this object fall through the opening which is left by removing the plug, how many men were left on the plugs, if any, at that time?
>
> A. One.
>
> Q. One. And just prior to the falling of this object, how many men were down there on the plugs?
>
> A. There were two men that hooked them on.
>
> Q. Two men hooked them on. And do you remember where this remaining man was after the object had fallen through the opening, where was he standing?
>
> A. Standing right on the left of me. (322)
>
> Q. Standing on your left?
>
> A. That's right.
>
> Q. *That would be on the offshore side of the place where you had removed the plug?*
>
> A. *Yes, sir.*
>
> Q. *Is that the place a man usually stands after he has removed a plug?*
>
> A. *Yes.*"

It seems reasonably certain from the above that Williams' partner never left the top of the plugs but merely stepped to one side and was standing there. It is of interest that he was on the offshore side of the opening from which the plug had been removed so that he would be out of the way of the plug

when it was swung to the inshore side of the vessel and landed on deck.

It is also stated on page 2 "The method used by Williams of leaving and returning to the hatch was one constantly used by longshoremen." That means was used by longshoremen by going to and coming from work in the reefer hold. But no such custom was shown while the longshoremen were in the process of removing plugs from the reefer hatch. In that regard Mr. Walsh testified in part as follows:

"Q. What ways are there of getting into and out of a hatch, in getting onto and out of and off of plugs?

A. Well, you either climb over the coaming or down over the rail.

Q. I see. And how do you get out?

A. Same way." (271)

* * * * * * *

"Q. Yes, that's a pontoon. Now, will you tell us whether or not you can climb up on a pontoon to get out of that hatch?

A. Well, it is according to how active you are.

Q. Pardon me?

A. It is according to how active you are. Yes, it is done. It is only about a foot and a half, I would say—probably not much more than that. (272)

Wines testified:

"Q. And will you tell how that was done, where the men stood, and how they get out of the hatch?

A. Well, they keep, they just hooked on the plug and *step all around on the other, on the offshore side of the plug* and leave, and two men land them on the deck.

A. I see.

A. In fact, there was another hold man took this man's place and hooked the other plugs on, then after they stand off on the offshore and hooked the last plug on and hoist that over, and then put that on the deck, inshore.

Q. I see. And where do they stand when they take the last plug off on the offshore side?

A. On the deck, off of the plugs.

Q. And how do they get from the plugs onto the deck?

A. Just step off the deck, off the plugs, onto the deck.

Q. I see. Well, *you mean they stepped over the coaming?*

A. That's right." (pages 317-318)

At page 3 it is stated that there is a wire cage over the cargo lights which is "flat".

Two types of lights were put in evidence and the only testimony as to which was used was that given by Mr. Walsh, who testified that the only type of cargo light in use at the hatch was defendant's Exhibit A (261).

That type of light is shown in the photograph attached to Appellant's opening brief (plaintiff's Exhibit "6-D"). It shows that the wire cage is rounded so that the reflector in which the light bulb is located stands several inches off the level of the winch platform or deck when the light is placed face down.